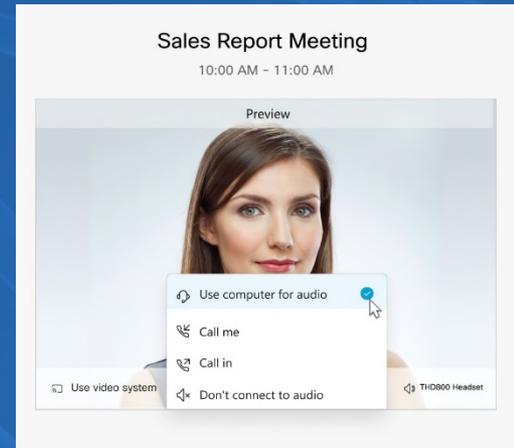
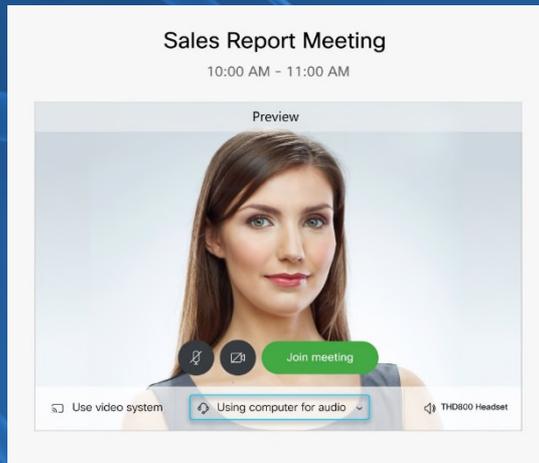


Welcome and thank you for joining us for today's presentation. Our topic is **"Preserving Risk Management Assets."**

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Preserving Risk Management Assets

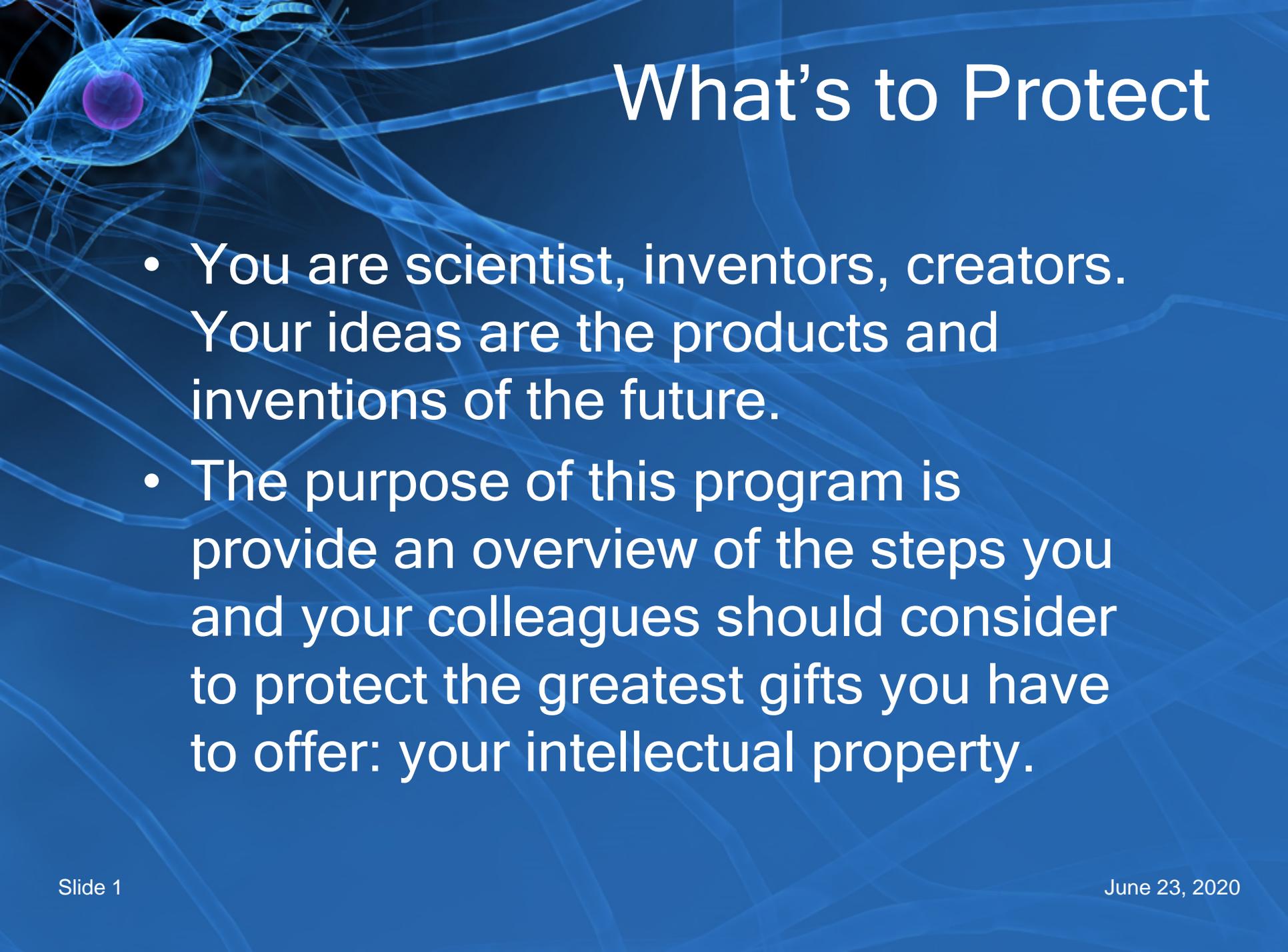
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ATTORNEYS AT LAW



What's to Protect

- You are scientist, inventors, creators. Your ideas are the products and inventions of the future.
- The purpose of this program is provide an overview of the steps you and your colleagues should consider to protect the greatest gifts you have to offer: your intellectual property.



It's Not Just Insurance!

- Too many companies rely upon insurance to cover risk. Don't!

First, incorporate. Corporate structure counts.

Second, non-disclosure agreements.

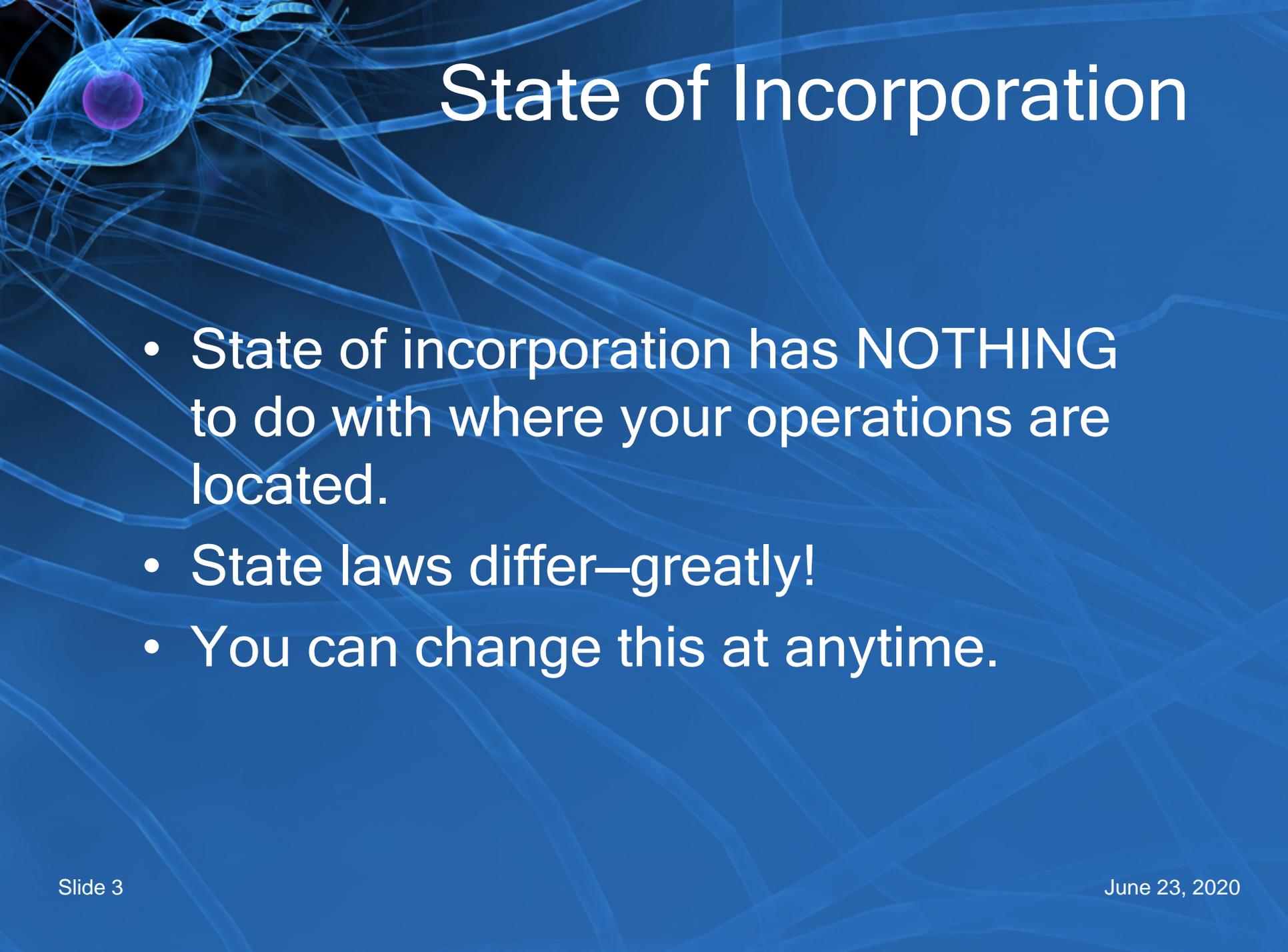
Third, Patent. Trademark. Copyright.

Make sure they are international.

Make sure they are updated as ideas evolve

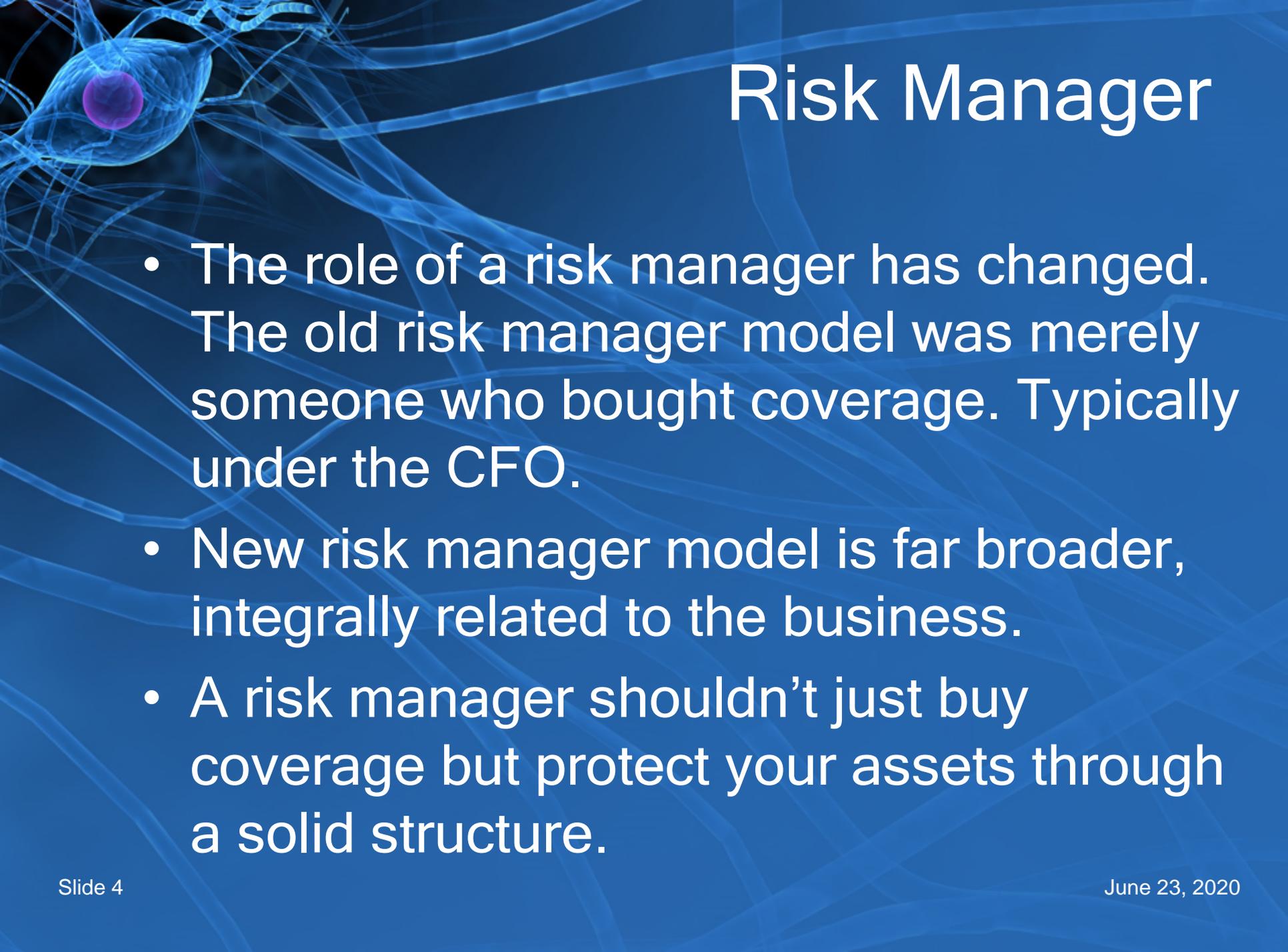
Fourth, insurance.

RISK MANAGEMENT IS A NETWORK OF SAFETY—NOT JUST INSURANCE.



State of Incorporation

- State of incorporation has **NOTHING** to do with where your operations are located.
- State laws differ—greatly!
- You can change this at anytime.



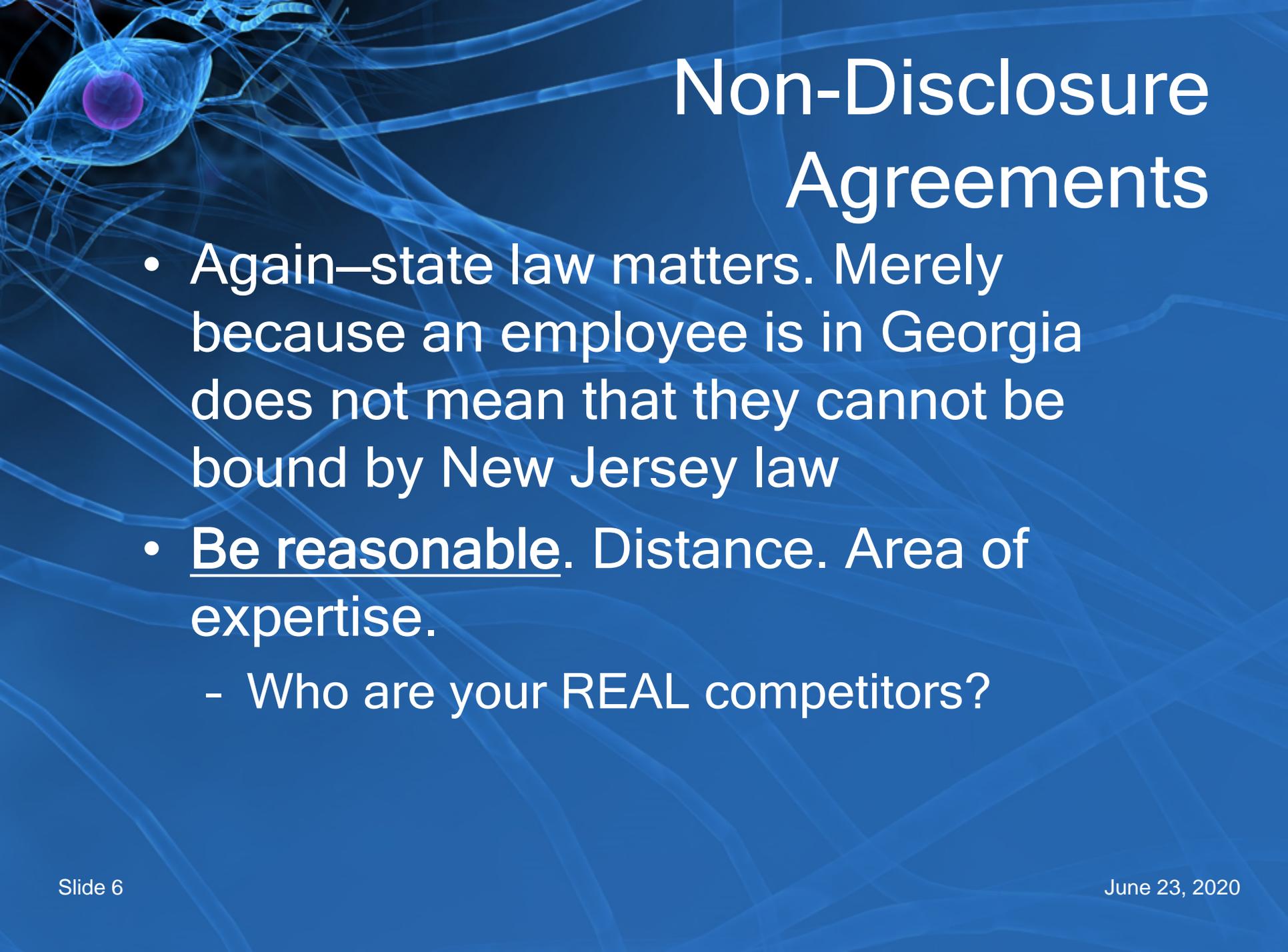
Risk Manager

- The role of a risk manager has changed. The old risk manager model was merely someone who bought coverage. Typically under the CFO.
- New risk manager model is far broader, integrally related to the business.
- A risk manager shouldn't just buy coverage but protect your assets through a solid structure.



Incorporation Documents: Read Them

- The bylaws are the genetic code for the company. Form follows function.
- Aspects to look at with particularity:
 - Indemnity and defense of directors and officers. Who bears the costs when?
 - Who owns intellectual property developed? What about that that is a logical extension?



Non-Disclosure Agreements

- Again—state law matters. Merely because an employee is in Georgia does not mean that they cannot be bound by New Jersey law
- Be reasonable. Distance. Area of expertise.
 - Who are your REAL competitors?



Patent, Trademark, Copyright

- Too often inventors consider these issues late—because they are focused on their ideas. Mistake.
- If someone else can take your idea, you have nothing. Protect EARLY.
- In patents in particular, protect not merely your idea but logical developments.



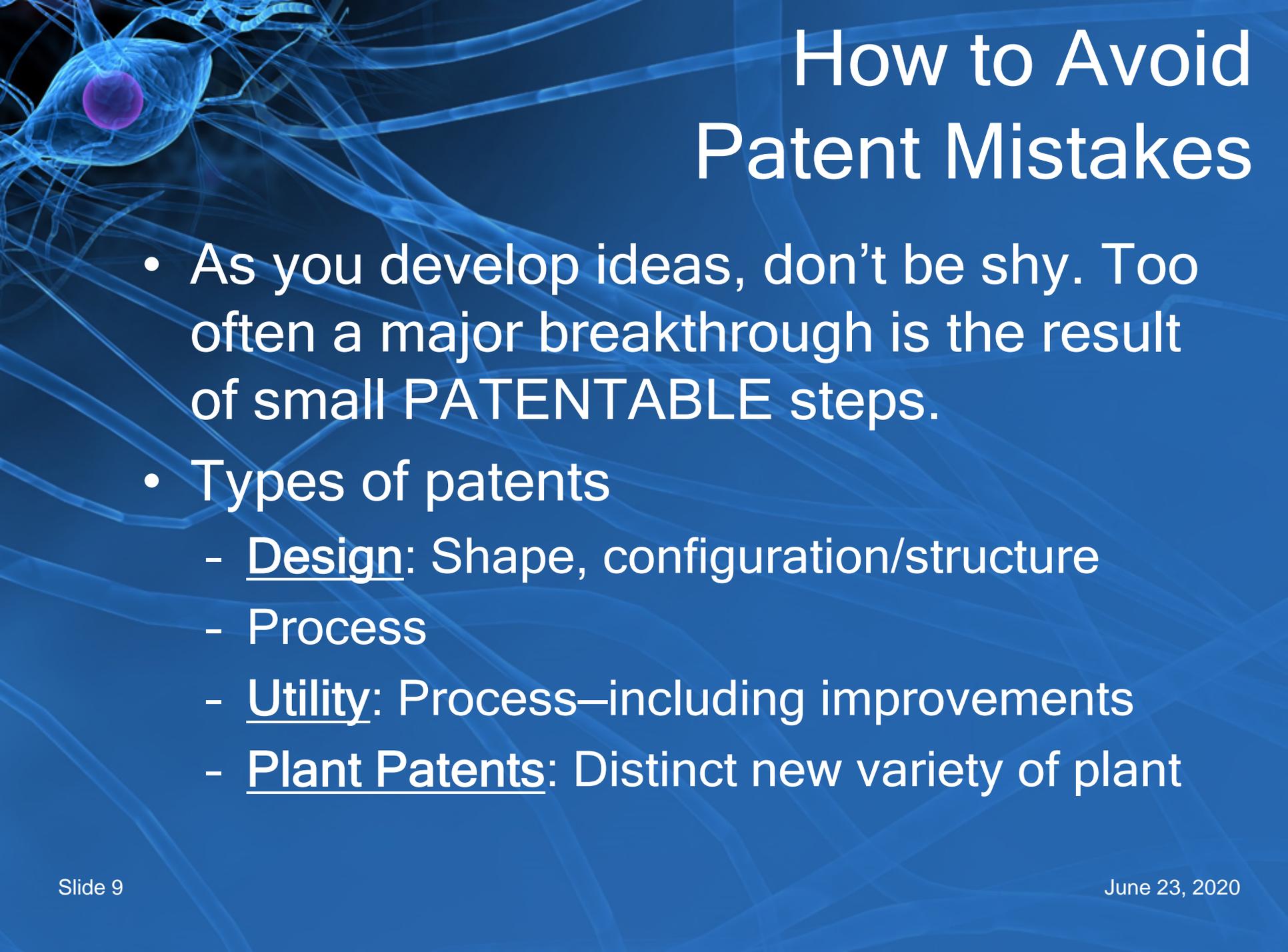
Common Patent Mistakes

Keep track of your patents.

Keep them up to date.

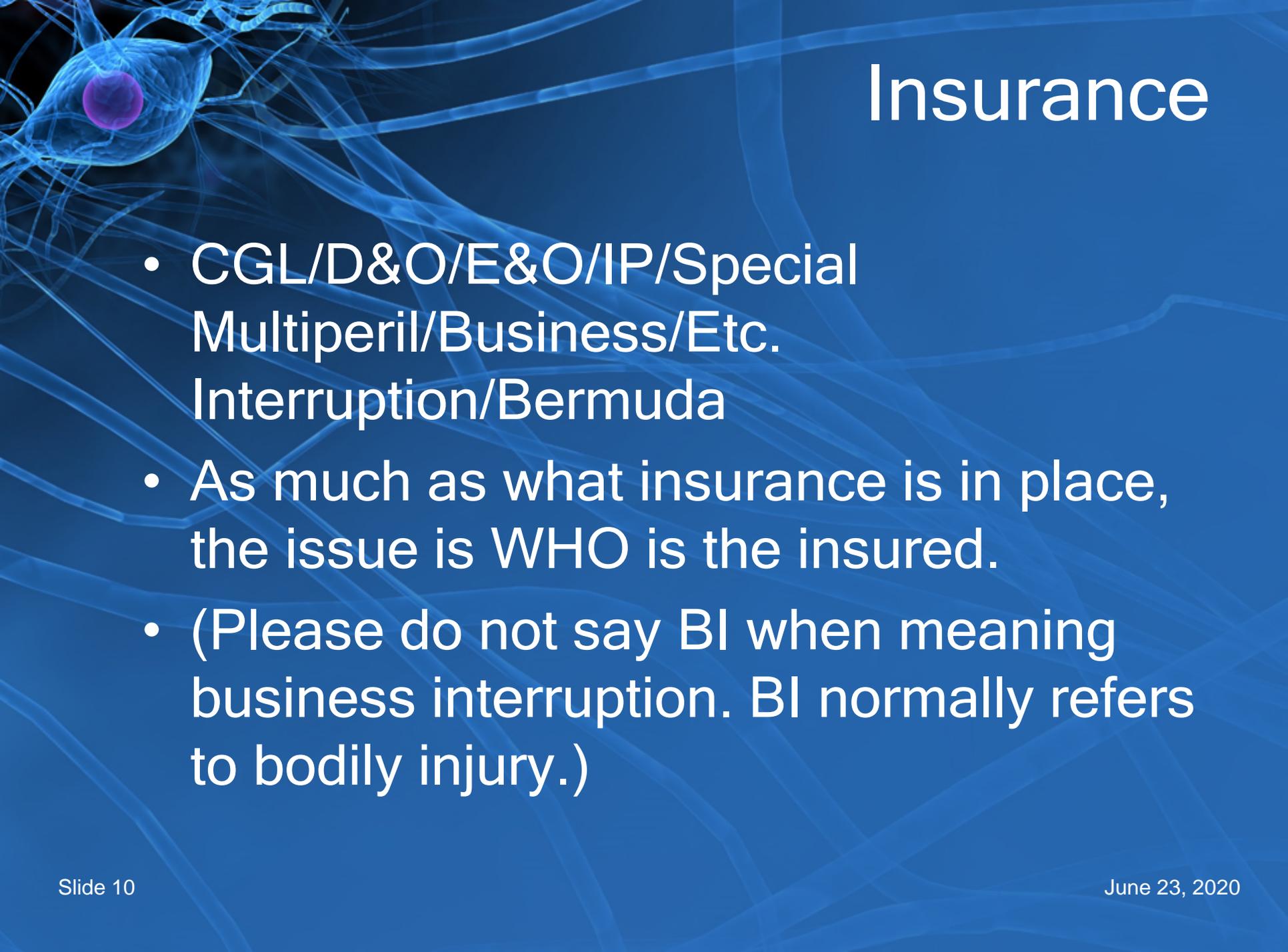
Revisit whether the scope is broad enough.

Know who owns what intellectual property.



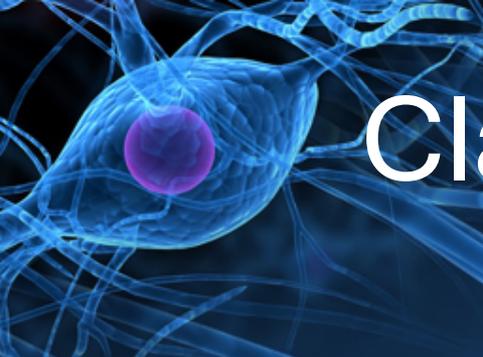
How to Avoid Patent Mistakes

- As you develop ideas, don't be shy. Too often a major breakthrough is the result of small **PATENTABLE** steps.
- Types of patents
 - Design: Shape, configuration/structure
 - Process
 - Utility: Process—including improvements
 - Plant Patents: Distinct new variety of plant



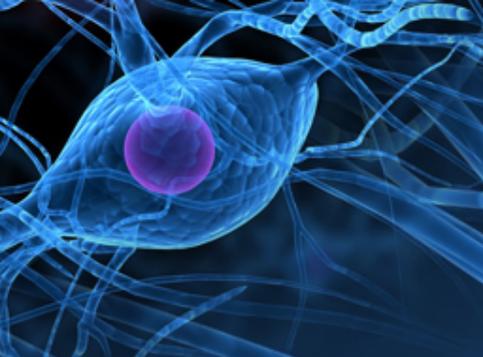
Insurance

- CGL/D&O/E&O/IP/Special
Multiperil/Business/Etc.
Interruption/Bermuda
- As much as what insurance is in place,
the issue is WHO is the insured.
- (Please do not say BI when meaning
business interruption. BI normally refers
to bodily injury.)



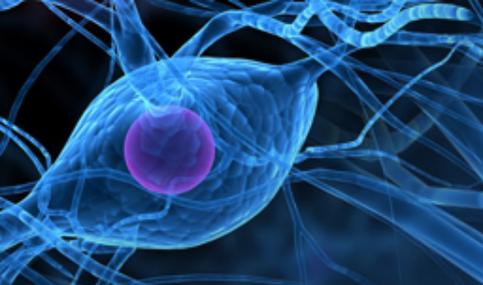
Claims Made v. Occurrence

- Occurrence based policies are simple. Timing of the event is insured years later
- Claims made policies—like Business Interruption. Tricky. Must give notice during policy period plus tail.
 - On claims made do not delay.
 - Give notice BROADLY and EARLY.



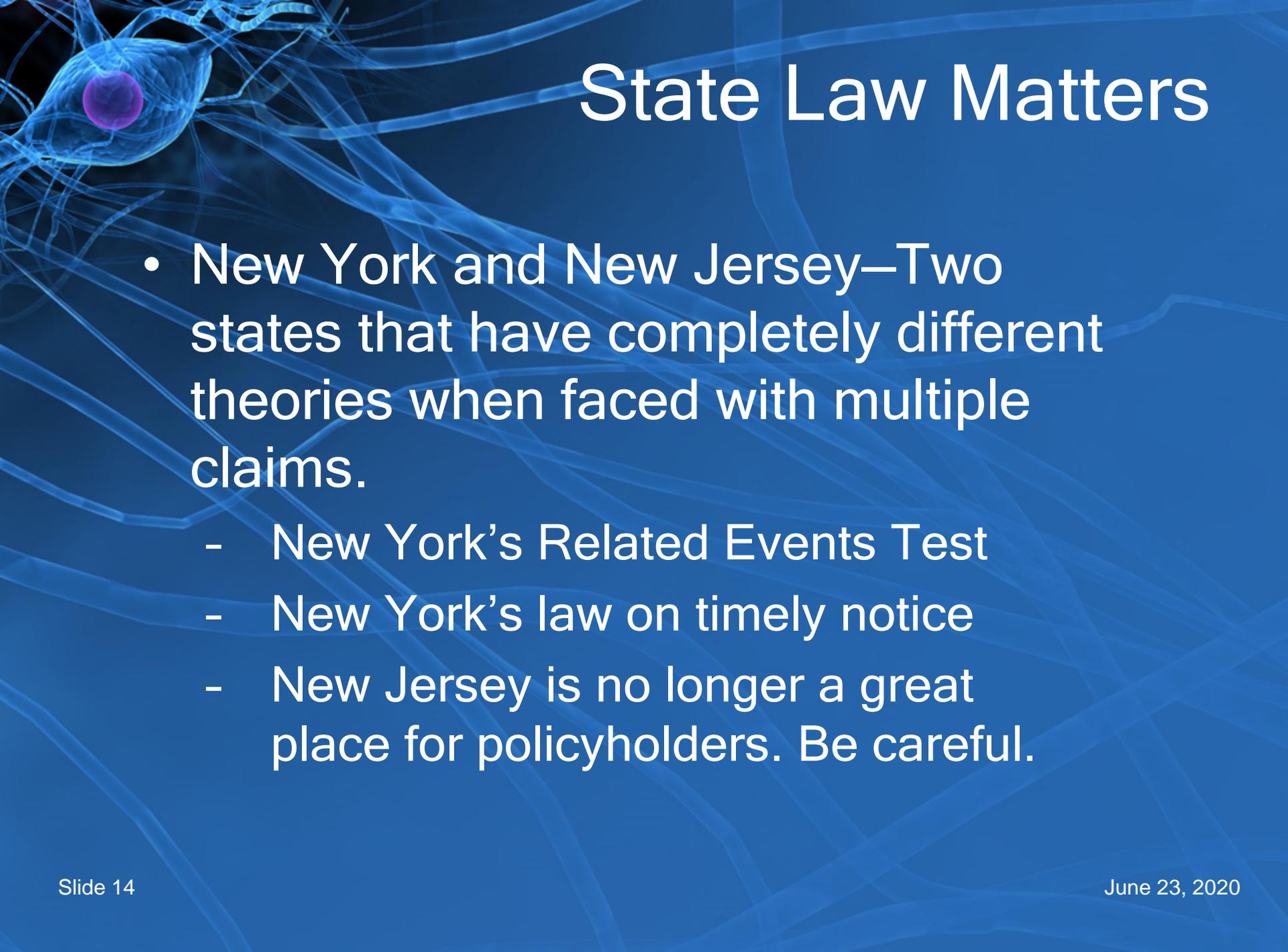
Notice: Early, BROADLY

- Without TIMELY notice, coverage under claims made policy is lost.
- Keep it simple.
- You do not need a suit—you need an event.
- There is no penalty for providing early notice. Huge penalty for not providing timely notice.



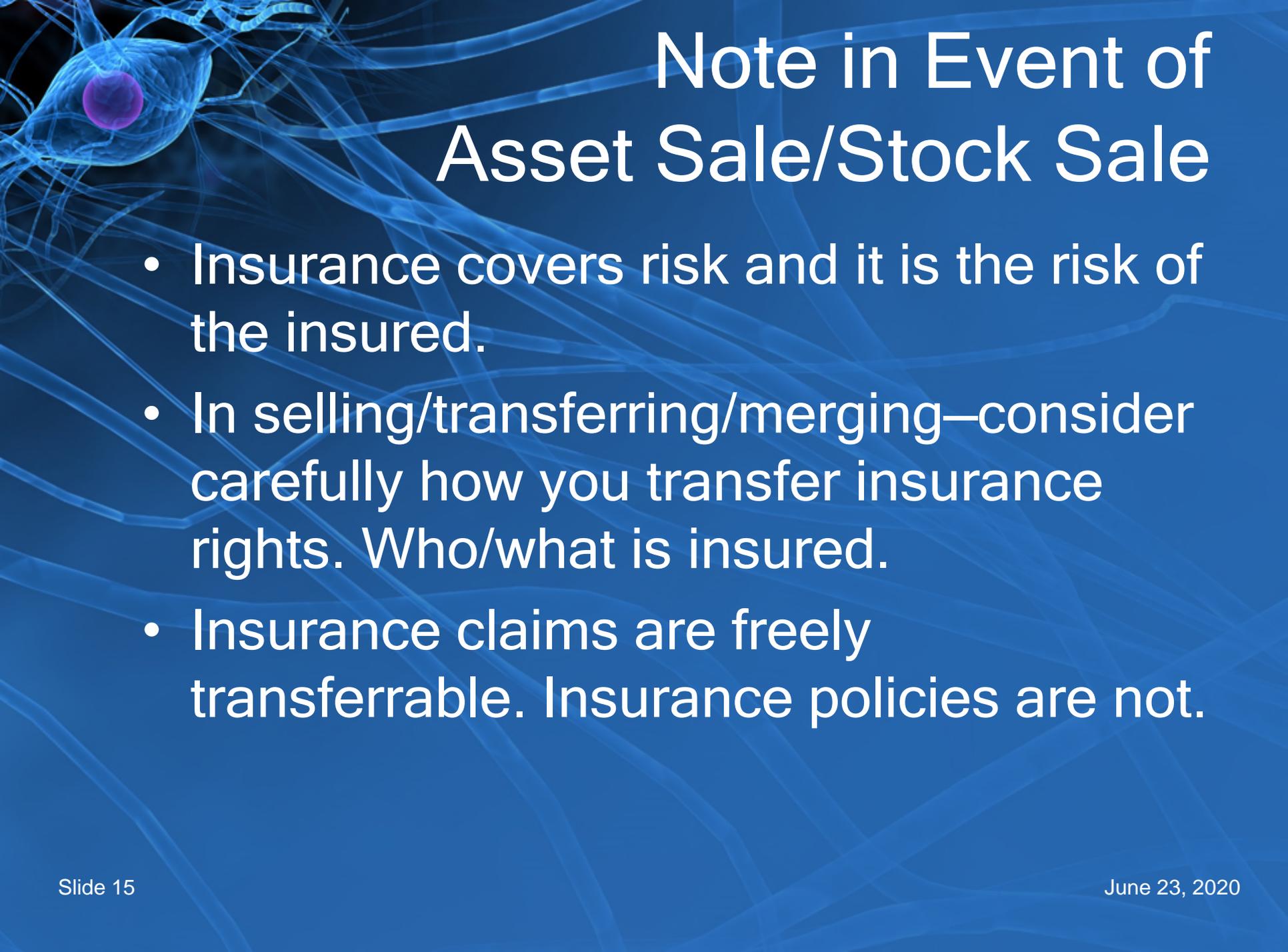
Notice Letter Is Simple

- Write to carrier and to broker.
- “This is to provide you notice that we’ve received the attached [X], which we believe is insured under insurance policy ABC123.”
 - The policy may dictate how notice is to be given.



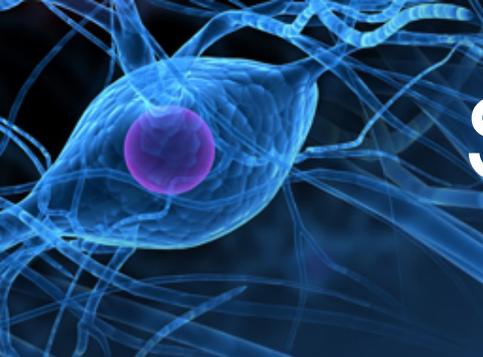
State Law Matters

- New York and New Jersey—Two states that have completely different theories when faced with multiple claims.
 - New York's Related Events Test
 - New York's law on timely notice
 - New Jersey is no longer a great place for policyholders. Be careful.



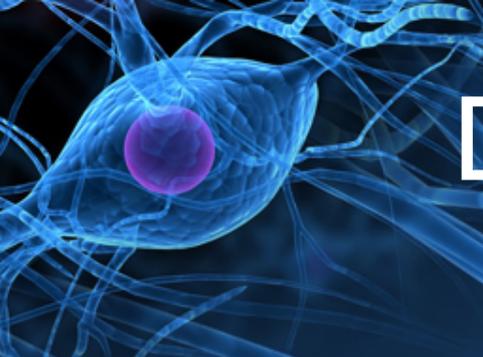
Note in Event of Asset Sale/Stock Sale

- Insurance covers risk and it is the risk of the insured.
- In selling/transferring/merging—consider carefully how you transfer insurance rights. Who/what is insured.
- Insurance claims are freely transferrable. Insurance policies are not.



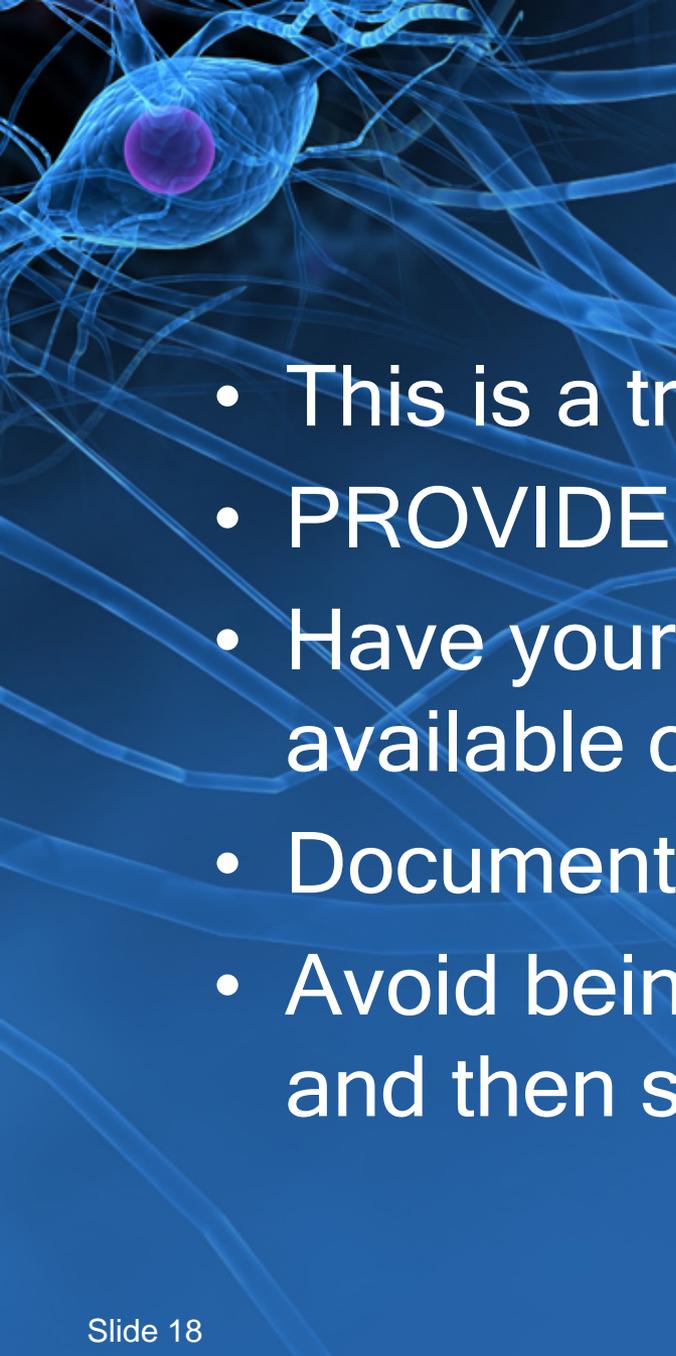
So You've Got a Claim--

- Which policy responds?
 - Comprehensive General Liability Policy
 - Special Multiperil
 - D&O
 - E&O
 - Business Interruption
 - Products Liability
 - Intellectual Property
 - Bermuda Coverage



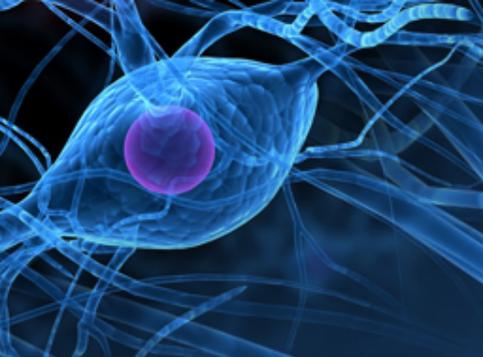
Domestic v. Surplus Lines

- Domestic policies like the CGL are standardized.
- Surplus lines are NOT uniform and do not use standardized terms.
- Just because it's cheap doesn't mean it's good. Bermuda coverage is cheaper but you get what you pay for.



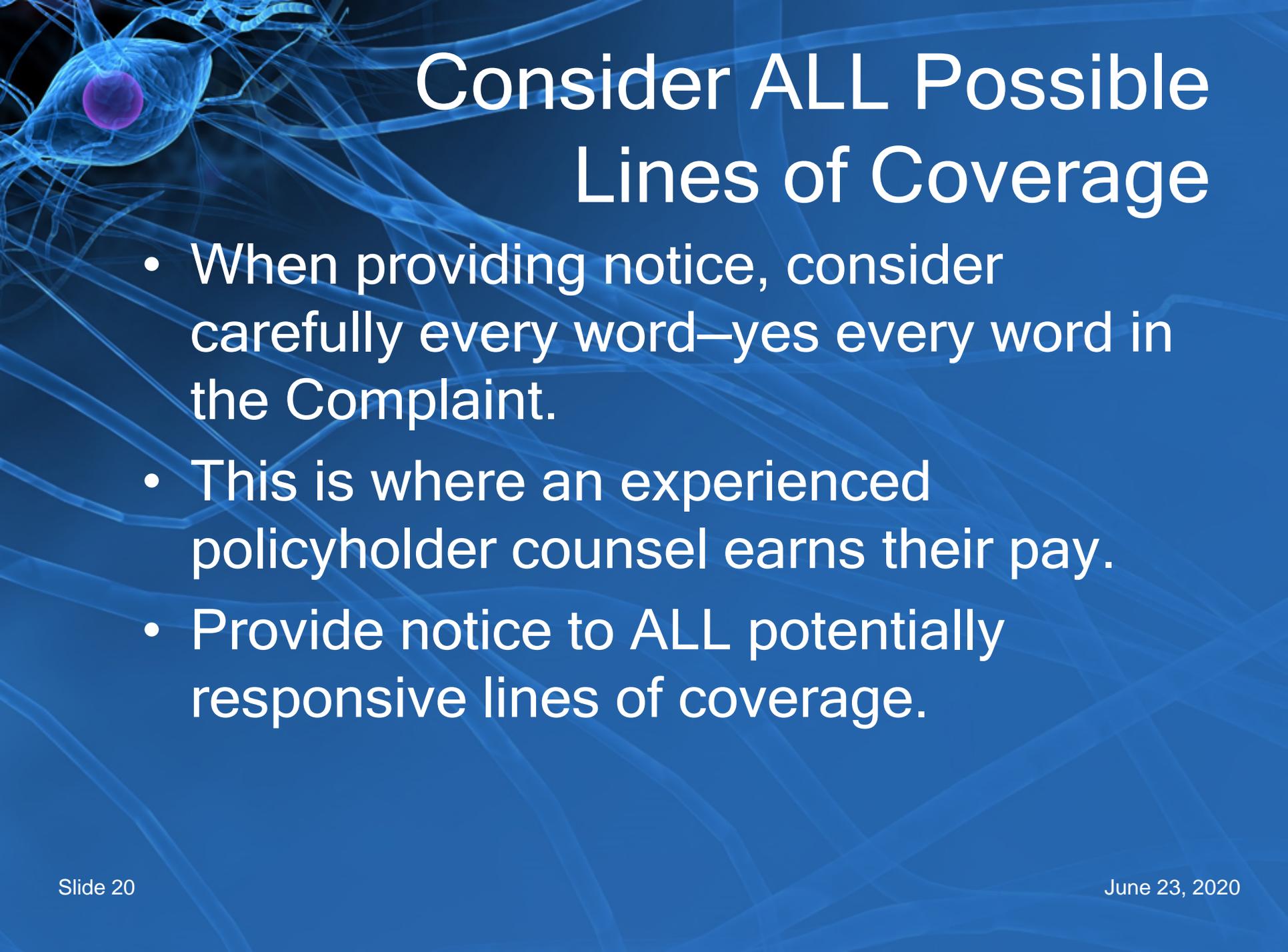
Business Interruption Coverage

- This is a tricky coverage.
- PROVIDE NOTICE UP FRONT.
- Have your policies with you and available off site.
- Document, document, document.
- Avoid being American—don't fix first and then seek coverage.



Get a Real Adjuster at the Outset

- For many claims (car accident/home insurance), you can get an adjuster after disaster strikes.
- Business interruption coverage is different. You must document along the way. You must document with precision. Get a REAL business interruption adjuster at outset.



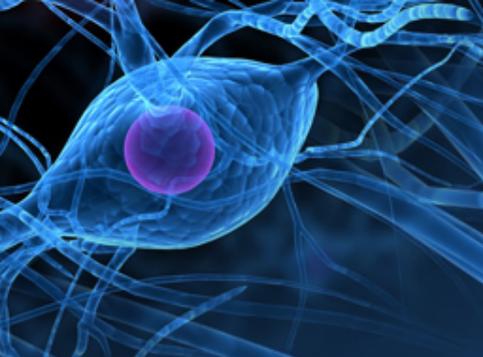
Consider ALL Possible Lines of Coverage

- When providing notice, consider carefully every word—yes every word in the Complaint.
- This is where an experienced policyholder counsel earns their pay.
- Provide notice to ALL potentially responsive lines of coverage.



How to Get the Right Coverage

- Get a REAL Broker. The risks your developing companies face are beyond the skill of most brokers. Be choosy.
- Ask about their experience in biotechnology, in insuring startups, in addressing risk transfer as companies merge and divest.
- Just because they insure your car . . .



The Application Process

- Your broker will process the application BUT you need to understand the basic process.
- The form here is detailed and will ask in detail about your products, application, claims.
- Don't skimp. If you don't disclose, you may lose coverage.



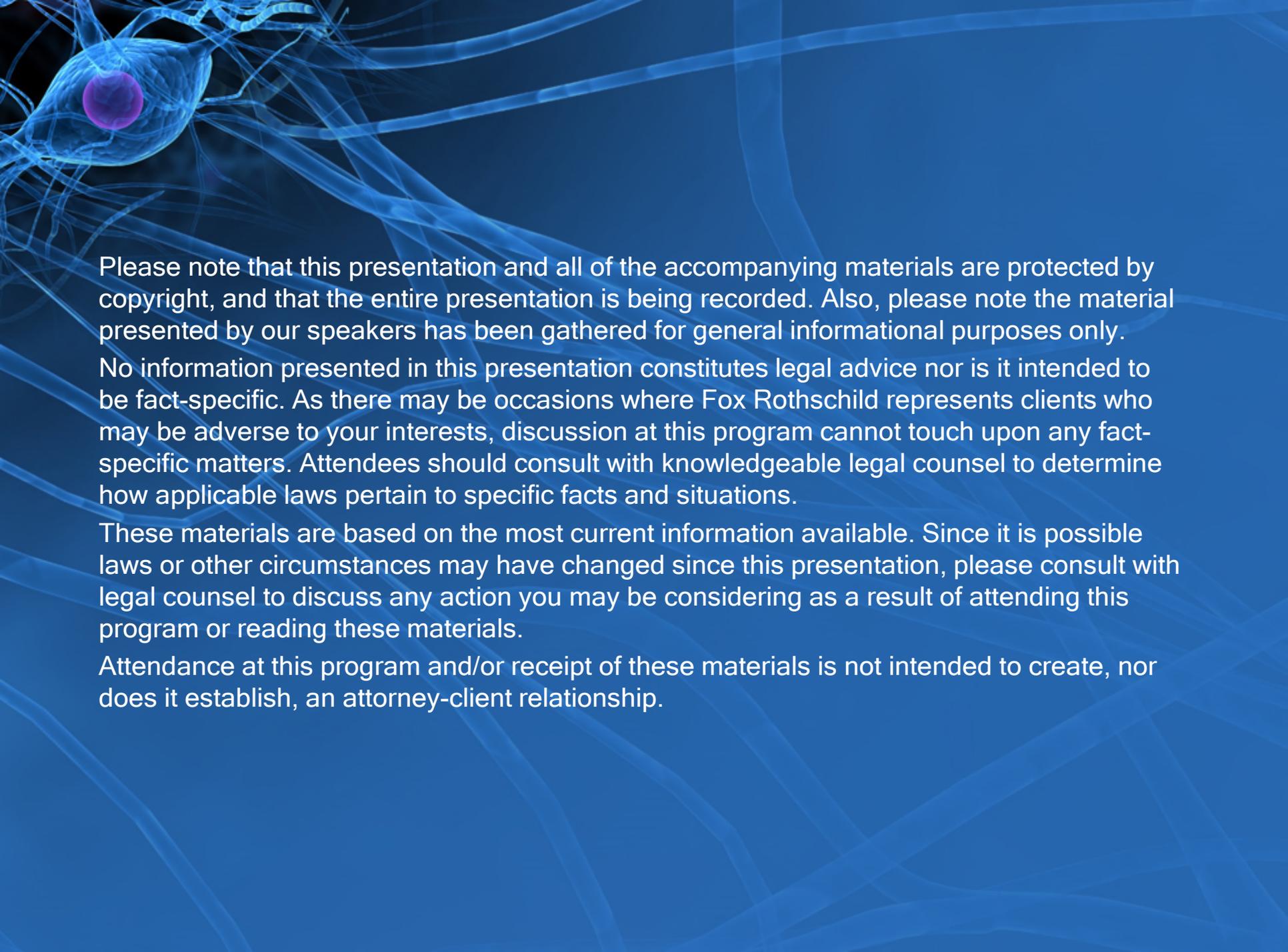
So You've Got Coverage: Keep It!

- Make copies. Keep a PDF in a place where you can access.
- Know your renewal dates.
- If the corporate form changes, revisit coverage.
- If your location changes, revisit coverage.



Conclusion

- Risk Management is a system not merely coverage.
- Your companies are going to grow, merge and change—make sure that your insurance follows the risk.
- Get a real broker. It's worthwhile



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